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## Rule 61. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Reporter's Notes to Rule 61: - 1. Rule 61 is identical to FRCP 61. The philosophy behind this rule is that proceedings should not be disturbed because of a technical error which resulted in no prejudice. *Gutshall v. Wood*, 123 F.2d 174 (C.A., 1942). While there is no corollary under prior Arkansas law, this rule does appear to express the Arkansas attitude towards harmless error.

2. The first paragraph of superseded Ark. Stat. Ann. 27-1901 (Repl. 1962) relative to new trials provided that a verdict or decision could be vacated and a new trial granted for the grounds stated therein which materially affected the substantial rights of the party. Implicit in that statute was the requirement that the error be prejudicial in order to justify the granting of a new trial. Also, Rule 103(a) of the Federal Rules of Evidence and of the Uniform Rules of Evidence recognizes that error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. This is simply another way of saying that the error must be other than harmless to afford any basis for complaint.

3. While this rule governs practice in trial courts, the appellate courts also should follow the same test. *Box v. Swindle*, 306 F.2d 882 (C.C.A. 5th, 1962); *Keaton v. Atchison T. & S.F. Ry.*, 321 F. 2d 317 (C.C.A. 7th, 1963). Ultimately, the determination of whether an error is prejudicial rests with the appellate court. The Arkansas Supreme Court has consistently held that harmless error affords no basis for complaint and this rule simply confirms the settled rule of law in this State.

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

VII. Judgment

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